



COHEN MILSTEIN

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VIA ECF

The Honorable Charles R. Breyer
United States District Court, Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, 15-md-02672-CRB (JSC)

Dear Judge Breyer:

Pursuant to Pretrial Order No. 2, I write requesting consideration for appointment either as a Co-Lead Counsel, or to a Steering Committee position, for car owners and lessees. For 46 years, Cohen Milstein has been a leading class action firm, recovering tens of billions of dollars in damages for injured plaintiffs. I have been at Cohen Milstein for the last 36 of those years. I also have specialized experience regarding the Volkswagen "Clean Diesel" case, having worked on some preliminary matters as one of the Interim Co-Lead Counsel in the Eastern District of Virginia. This extraordinary litigation requires counsel with an established record that can competently, creatively, and cost-effectively resolve this case so consumers can replace their polluting vehicles and obtain fair compensation. My extensive experience in resolving major class actions, that have merited settlement rather than protracted litigation, along with our abundant resources, stellar reputation, and my ability to work well with others, make me ideally suited for a key position in this case.

A. Work Counsel Has Done in This Action

Cohen Milstein filed on behalf of consumers against Volkswagen shortly after the Environmental Protection Agency filed its Notice of Violation. Judge Liam O'Grady selected me as an Interim Co-Lead for Volkswagen cases filed in the Eastern District of Virginia. *See In re Volkswagen "Clean Diesel" Cases*, 1:15-cv-1218 (E.D. Va.) (ECF No. 50). There, I helped oversee the drafting of the first-entered evidence preservation order, a protective order, an ESI protocol, and discovery requests. My firm worked cooperatively with Co-Lead Counsel designated in the Eastern District of Michigan (Keller Rohrbach and Lieff Cabraser) and the District of New Jersey (Cecchi Byrne and Seeger Weiss) to coordinate these various pre-MDL aspects.

My firm understands the legal issues that may arise in this case. My partner, Ted Leopold, is Co-Lead Counsel in MDL 2540, which relates to defective diesel emissions systems in

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Caterpillar engines. That case involves the same regulatory regime and legislation at issue here: the Clean Air Act and the Environmental Protection Agency's phased-in standards to reduce nitrogen oxide emissions from new diesel engines. We prevailed on a motion to dismiss premised on Clean Air Act preemption. *In re Caterpillar, Inc., C13 and C15 Engine Prods. Liab. Litig.*, No. 1:14-cv-3722 (JBS-JS), 2015 WL 4591236 (D.N.J. July 29, 2015). Clean Air Act preemption will likely be an issue here, especially given the EPA's civil suit filed on January 4th. Cohen Milstein also located and developed experts on diesel engines for that case, which has settled and awaits preliminary approval.

B. Experience In Handling Class Actions and Complex Litigation

Cohen Milstein is unique among class action firms in the broad breadth of its practice areas. It has demonstrated a commitment to protect consumers and the public interest in dozens of antitrust, securities, consumer protection, product liability, civil rights and human rights class actions. Your Honor has had some experience with my firm and my partner, Joseph Sellers, in the gender discrimination litigation brought on behalf of female employees of Wal-Mart, which was assigned to your Honor after the Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. ___, 131 S.Ct. 2541 (2011). Showing our perseverance in this now 15 year old litigation, we are pursuing regional class actions around the country after the reversal of a nationwide class certification by the Supreme Court. That case reflects our commitment and staying power in cases that require it. I am also leading Cohen Milstein's effort as Co-Lead Counsel in the securities fraud MDL related to the Deepwater Horizon oil spill in the Gulf of Mexico. *In re BP, PLC Sec. Litig.*, 10-md-2185 (S.D. Tex.).

My firm has many notable achievements among consumer class actions. Currently, I am Co-Lead Counsel, along with Cotchett Pitre and Hagens Berman, in an ongoing MDL relating to excess formaldehyde in laminate flooring. *In re Lumber Liquidators Prod. Liab. Litig.*, 15-md-2627 (E.D. Va.).¹ My partner, Andrew Friedman, is serving as Co-Lead Counsel in *In re Anthem, Inc. Data Breach Litig.*, 15-md-2617 (N.D. Cal.). This MDL encompasses 80 million consumers caught in a massive data breach. Lief Cabraser and Gibbs Law Group are sole members of Plaintiffs' Steering Committee in that case. My firm was instrumental in successfully resolving the following: *Khoday v. Symantec Corp.*, 11-cv-00180-JRT (D. Minn.) (settlement pending of \$60 million for consumers deceived by ecommerce sellers); *In re General Motors Dex-Cool Products Liability Litig.*, 03-cv-1562 (S.D. Ill.) (working principally with Girard Gibbs, represented consumers with engine damage caused by defective factory-installed coolant, leading to dollar-for-dollar reimbursement to each consumer for up to \$800); *Snyder v. Nationwide Mut. Ins., Co.*, No. 97/0633 (Sup. Ct. NY Onondaga Cty) (obtained \$85 million for class of insureds); *Howard v. Ford Motor Co.*, (Cal. Sup. Ct.) (obtained prospective recall of 1.7 million cars for stalling problems, settled immediately before scheduled second jury); *Masonite Hardboard Siding Litigation*, Civ. Action No. 996787 (Cal. Super. Ct.) (working principally with Lief Cabraser to secure over \$1 billion for consumers in cases relating to defective siding).²

¹ Judge Anthony J. Trenga presides over this MDL, and is an available reference as to my work. He can be reached at (703) 299-2113. Judge Keith P. Ellison is the judge in the BP securities MDL litigation, and can be reached at (713) 250-5806.

² For further examples of my and Cohen Milstein's success in complex litigation, see Ex. A.

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Cohen Milstein has earned recognition as a “class-action powerhouse” (*Forbes*), “the most effective law firm in the U.S. for lawsuits with a strong social and political component” (*Corporate Legal Times*), one of “America’s 25 Most Influential Law Firms” (*The Trial Lawyer*) and as one of the “Most Feared Plaintiffs Law Firms” (*Law360*). Just this week, *Law360* listed its Class Action Groups of 2015, and included Cohen Milstein as one of only three Plaintiffs Firms in the country in that category.³ The *National Law Journal* has repeatedly listed Cohen Milstein on its Hot List of Plaintiffs Firms. In addition, I, and a number of my partners including Joseph Sellers, have repeatedly been included by *LawDragon Magazine* in their list of the Top 500 leading lawyers in the United States, with a full-page profile about me in the 2014 edition.

C. Ability to Work Cooperatively With Others

Courteousness and professionalism towards co-counsel, and opposing counsel, are essential to the conduct and management of complex multidistrict action. I have been named as one of the most admired attorneys in the country, known for “being a straight-shooter while pulling off monumental settlements.”⁴ This behavior and reputation has garnered the respect of many of my colleagues in the plaintiffs’ bar, those in the defense bar, and the mediators I have appeared before, including those we recommended to the Court as Settlement Masters. I and my partners have worked with many excellent counsel seeking leadership positions in this action, and we have received extensive support from them.⁵

D. Access to Resources to Timely Prosecute this Case

Cohen Milstein has approximately 80 attorneys, and can quickly and efficiently complete any duties assigned by this Court. In addition to myself, I will be drawing on our Consumer Protection and Unsafe Products group that has six attorneys well-seasoned in consumer class action cases.⁶ In the past two years, my firm helped conclude some of the largest class actions in the Country, including (after trebling) a \$1.1 billion jury award in *In re Urethane Antitrust Litig.*, 04-md-1616 (D. Kan.), and close to \$ 2 billion in settlements in mortgage-backed securities cases. We are eminently able to participate in a case as vast as this one.

CONCLUSION

Given my experience and my firm’s resources, I am confident I can be an asset on behalf of the Plaintiff Class. I ask the Court to consider appointing me as a Co-Lead Counsel in this case, or alternatively, to serve on a Steering Committee, where my abilities can serve the Class in the areas of discovery, experts, briefing, and/or settlement.

Respectfully Submitted,

/s/ Steven J. Toll

³ <http://www.law360.com/articles/743097/class-action-group-of-the-year-cohen-milstein>.

⁴ <http://www.law360.com/articles/188719/print?section=newyork>

⁵ See Ex. B.

⁶ See <http://www.cohenmilstein.com/practices.php?PracticeID=4&view=attorneys>